IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

OP.No. 17909 of 1997(G)

PETITIONER:

DR.ALEX.K.ITTYAVIRAH,
KARIAMAPDY HOUSE, CHALAKUZHI ROAD,
MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.BENNY GERVACIS
SRI.R.KRISHNA RAJ

RESPONDENTS:
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1. **STATE OF KERALA, REP.BY ITS SECRETARY,**
HEALTH AND FAMILY WELFARE
(SPECIAL) DEPARTMENT, TRIVANDRUM.

2. **THE DIRECTOR OF MEDICAL EDUCATION,**
DIRECTORATE OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O.,
TRIVANDRUM.

3. **THE PRINCIPAL , MEDICAL COLLEGE,**
KOTTAYAM.

BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.17909/1997

ORDER ON CMP. NOS.31909/1997 , 45139/2000 IN OP.17909/1997

DISMISSED

04.07.2007 SD/- T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COVERING LETTER NO.61-16591/83 DT. 27.12.83.

EXT.P2:- COPY OF THE ORDER NO.GO(Rt) 1917/84/ HEALTH DT. 15.6.1984.

EXT.P3:- COPY OF THE COMMUNICATION FROM THE 3RD RESPONDENT DT. 22.11.84.

EXT.P4:- COPY OF THE LETTER DT. 14.2.85 FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P5l- COPY OF THE ORDER OF THE 1ST RESPONDENT NO.B.O.(RT) 819/85/HEALTH DT. 13.3.1985.

E.XT.P6:- COPY OF THE LETTER DT. 15.10.1985.

EXT.P7:- COPY OF THE STATEMENT OF ALLEGATION ISSUED BY THE 1ST RESPONDENT.

EXT.P7(a):- COPY OF THE MEMO OF CHARGES ISSUED BY THE 1ST RESPONDENT DT. 17.9.90.

EXT.P8:- COPY OF THE STATEMENT FILED BY THE PETITIONER DT. 25.10.90.

EXT.P9:- COPY OF THE LETTER DT. 11.9.91 .

EXT.P10:- COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT DT. 17.9.01.

EXT.P11:- COPY OF THE LETTER DT. 1.10.91 OF THE PETITIONER.

EXT.P12:- COPY OF THE SHOW CAUSE NOTICE ISSUED BY THE 1ST RESPONDENT DT.10.11.96.

EXT.P13:- COPY OF THE ORDER DT. 26.3.97 ISSUED BY THE 1ST RESPONDENT.

EXT.P14:- COPY OF THE ORDER DT. 2.9.97 ISSUED BY THE 2ND RESPONDENT.

/TRUE COPY

T.R. Ramachandran Nair, J.

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O.P.NO.17909 of 1997-F

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Dated this the 4th day of July, 2007

JUDGMENT

The petitioner has filed this Original Petition seeking to quash Exts.P5, P13 and P14 orders. As per the above orders, after cancellation of leave, the petitioner has been removed from the Medical Education Service with effect from 1.4.1984 with a further direction that the bonded obligation of Rs.25,600/- plus Rs.1,000/- outstanding against the petitioner, will be recovered from him and the sureties.

2. The petitioner entered the Medical Education Service as Tutor Radiodiagnosis, in Medical College, Kottayam. While so, he was selected for Radiodiagnosis course in the Medical College, Thiruvananthapuram. The Government as per G.O.Rt. No.110/78/HD dated 11.1.1978 accorded sanction to him to join for the above course and also to treat the same as on deputation on his duly executing a bond to serve the Government for a period of seven years. He executed the bond on 3.2.1978.

3. After the completion of the course, he rejoined the service on 12.2.1980 and continued there till 1.4.1984. While working in the Medical College, Kottayam, by an application dated 14.11.1983 he sought for leave

without allowance for a period of five years for taking up employment abroad. This leave application was forwarded along with a covering letter, Ext.P1 by the third respondent to the second respondent. Even though he had been waiting for favourable orders, no communication reached him which compelled him to seek earned leave for 30 days from 2.4.1984 to 1.6.1984 and further earned leave for a period of 60 days. On sanction of the same, he proceeded to go abroad for joining employment there. According to the petitioner, he also executed a supplementary bond to the effect that he will serve the balance period of his bonded obligation on his return from leave.

4. In the meanwhile, the first respondent has sanctioned leave without allowance for five years as per Ext.P2 order dated 15.6.1984, from the date of avail after fulfilling the bonded obligation. It is specifically stated in the order that he will be relieved on fulfilling the conditions for bonded obligation as stipulated in para (viii) to G.O.(P) NO.780/83/Fin. Dated 16.12.1983. It appears that he sought for a fresh relieving order consequent on the above. The Director of Medical Education sent a report to the Government evidenced as Ext.P4, for necessary instructions in the matter after enclosing a representation dated 6.8.1984 of the petitioner. In the above report, the Director of Medical Education has noted that the petitioner has availed eligible leave pending the application for leave

without allowance for taking up employment abroad and has left India to take up the employment. It is also reported therein that based on his representation dated 6.8.1984, the doctor was directed to report how he got relief before fulfilling the bonded obligation as directed by the Government. Based on the above report of the Director of Medical Education, by Ext.P5 the Government cancelled Ext.P2 and the petitioner was directed to report for duty forthwith. Thereafter, the petitioner submitted a representation to the Director of Medical Education, produced as Ext.P6 stating that he is having a five year contract to serve the Government of Abu Dhabi and in view of the direction of the Government to report for duty, they have agreed to relieve him in April 1986. Therefore, he requested that he may be given a suitable posting as Asst. Professor of Radiodiagnosis in one of the Medical Colleges to enable him to join duty by 20th of April, 1986.

5. The case of the petitioner is that while he was waiting for orders on the request submitted to the Director of Medical Education, he was served with Ext.P7 memo of charges along with statement of allegations which is dated 17.9.1990. The main charges are that he had accepted appointment abroad and left India before grant of leave and without fulfilling the bonded obligations as per the bond executed while he was undergoing post graduate course accepting stipend from the Government.

The petitioner submitted a reply statement as Ext.P8 explaining the circumstances. Subsequently, he submitted his resignation from service as per Ext.P9 dated 11.9.1991. He has resigned with effect from that date from the Medical Education Service. By Ext.P10 dated 17.9.1991 the Director of Medical Education informed him that the Government have appointed him to enquire into the allegations against him and further directing him to appear before the Director on 30.9.1991 at 11 a.m. with all evidences. He submitted Ext.P11 requesting to drop further action. According to the petitioner, he did not receive any further communication or copy of the enquiry report. But finally, he was issued with Ext.P12 show cause notice proposing to remove him from service with effect from 1.4.1984 for absence from duty unauthorisedly. It is noted in Ext.P12 that the resignation submitted by the petitioner could not be accepted since he was on unauthorised absence from 1.4.1984 and also for not fulfilling the bonded obligation. Finally, the Government passed Ext.P13, the impugned order, removing him from service and directing recovery of the amount covered by the bonded obligation.

6. Learned counsel for the petitioner argued that the entire proceedings are bad and that in spite of his request of the petitioner to allow him to join duty, no reply was given to him which compelled him to resign from service. It is also pointed out that he was prepared to execute a fresh

bond after rejoining service.

7. The respondents have filed a counter affidavit justifying the action taken against the petitioner.

8. The removal from service is ordered based on the unauthorised absence from duty. The admitted case shows that the petitioner left India and joined in a new employment even before relieving himself from the Medical Education service. The leave without allowance was granted only by Ext.P2 with a specific direction to relieve him on fulfilling the conditions for bonded obligation. The action of the petitioner in joining the new employment without waiting for the sanction of the application for leave without allowance for taking employment abroad, cannot be termed as legal. It also shows that he went after availing eligible leave, but normally eligible leave will be granted only to those who are to report for duty on the expiry of the leave. Ext.P7(a) will show that his action in applying for eligible leave and leaving the country in order to take up appointment abroad without prior sanction of the Government, has been treated as unauthorised absence from service. These facts will show that there is no illegality in the action taken by the respondents as admittedly he had left India even before sanctioning of the leave without allowance to take up employment abroad. Hence, the disciplinary action taken against him is in accordance with law. The authorities were right in not accepting the resignation submitted by the

petitioner.

9. Then the other question is regarding the recovery ordered on the bonded obligation. Admittedly the petitioner was selected for the course while he was working as a Tutor and he was on deputation. There was an obligation as per the bond which he has not fulfilled. Further, even if he wanted to go abroad, going by the specific conditions in Ext.P2, he could have been relieved only on fulfilling the conditions for the bonded obligation. The submission of the learned counsel for the petitioner that he had offered to execute a fresh bond after rejoining service, cannot at all help him, since his obligation arises on the bond executed pursuant to G.O.Rt. No.110/78/HD. Dated 11.1.1978. Therefore, the recovery ordered is also perfectly justified, as the petitioner is bound by the obligations of the bond.

For the above reasons, the original petition fails and the same is dismissed. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P.NO.17909 of 1997-F

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JUDGMENT

4th day of July, 2007